

LOCAL STATION BLANKET RADIO LICENSE

AGREEMENT made between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS ("Society") and Hicks Broadcasting of Indiana L.L.C.

("Licensee") as follows:

1. **Term and Scope of License.** Society grants to Licensee and Licensee accepts for a period commencing as of April 1, 1994 and ending December 31, 1995, a license to perform publicly by radio broadcasting on "Licensee's Radio Programs" from Radio Station WRBR - FM located at South Bend, Indiana

("the Station") non-dramatic performances of the separate musical compositions in the "Society's Repertory". This license does not extend to or include the public performance by radio broadcasting or otherwise of any rendition or performance of any opera, operetta, musical comedy, play or like production, as such, in whole or in part. Nothing in this agreement shall be construed as granting, or as authorizing Licensee to grant, to others any right to perform publicly or reproduce in any manner any of the musical compositions licensed under this agreement, or as authorizing any receiver of any radio broadcast to perform publicly or reproduce the same in any manner. The radio broadcast performances licensed under this agreement may originate at the Station or at any other place but nothing in this agreement shall be deemed to grant a license to anyone authorizing any public performance in such other place of any such composition.

2. **Definitions.** As used in this agreement:

A. "Society's Repertory" means all musical compositions which the Society has the right to license for public performance now or hereafter during the term of this agreement. Included for the full term of this agreement are all compositions written and copyrighted by members of Society and in the repertory on the date this agreement is executed. Compositions later written or copyrighted by members during the license term shall be included for the full balance of the term.

B. "Licensee's Radio Programs" means all programs and announcements broadcast by the Station, all of "Licensee's Simulcast Programs", and all of "Licensee's Occasional Network Programs", whether originated by the Station or by any other source, including those furnished by networks, or by any other program suppliers, whether or not such networks or other program suppliers are licensed by Society.

C. "Licensee's Simulcast Programs" means all programs broadcast simultaneously or by so-called "delayed" or "repeat" broadcasts by two or more stations owned by Licensee or for which Licensee acts as a time broker.

D. "Licensee's Occasional Network Programs" means all programs that Licensee (or any company under the same or substantially the same ownership, management or control as the Station) causes to be broadcast simultaneously or by so-called "delayed" or "repeat" broadcasts on any group of two or more radio stations affiliated with Licensee for the purpose of broadcasting such programs. For the purposes of this agreement any sports network operated by Licensee (or any company under the same or substantially the same ownership, management or control as the Station) shall be deemed to be an occasional network.

E. "Time Broker" means any person, firm or corporation not under the same or substantially the same ownership, management or control as the Station that engages in "time brokerage".

F. "Time Brokerage" means any arrangement between a station and a time broker that:

- (1) authorizes the resale by the time broker of the radio broadcasting facilities of the station;
- (2) permits the time broker to provide programs for 10% or more of the time the station is on the air; and
- (3) provides for the sale by the time broker of all or substantially all announcements within the brokered time.

G. "Gross Revenue" means all cash payments made by or on behalf of:

- (1) sponsors or donors for the use of radio broadcasting facilities of the Station;
- (2) sponsors of, or donors to, Licensee's simulcast programs;
- (3) sponsors of, or donors to, Licensee's occasional network programs;
- (4) time brokers who each provide programs for less than 10% of the time the Station is on the air, or recognized wholly independent companies engaged in arrangements with radio or television stations generally for the resale of the radio broadcasting facilities of the Station; and

[illegible]

(5) wholly independent networks or other program suppliers for the broadcasting of such networks' or program suppliers' programs or announcements by the Station.

Such payments shall include all payments made directly to, or as authorized by, Licensee, its employees, representatives, agents or any other person acting on Licensee's behalf, and all payments made to any company, firm or corporation under the same or substantially the same ownership, management or control as the Station. Such payments shall not include payments made to third parties, such as networks or program suppliers, that are not under the same ownership, management or control as the Station, or non-cash payments such as payments in goods or services commonly referred to as "trades" or "barter".

H. "Adjusted Gross Revenue" means gross revenue less:

- (1) advertising agency commission not to exceed 15% actually allowed to an advertising agency that has no direct or indirect ownership or managerial connection with Licensee or the Station;
- (2) any sums received from Licensee's political radio programs;
- (3) bad debts actually written off and discounts allowed or rebates paid; and
- (4) rate card discounts, cash, quantity and/or frequency actually allowed.

I. "Revenue Subject to Fee" means adjusted gross revenue or, at Station's option, adjusted gross revenue less the total of the following itemized deductions which exceeds 15% of adjusted gross revenue:

(1) All compensation over and above the total annual amount indicated below, actually paid by the Station to personnel whose duties primarily are acting as (a) master of ceremonies or disc jockey on musical programs; or (b) vocalist or instrumentalist engaged for a specific program; or (c) featured newscaster and news commentator; or (d) featured sportscaster; or (e) master of ceremonies on an entertainment program; or (f) announcer:

<u>Station's Annual "Adjusted Gross Revenue"</u>	<u>Total Annual Amount Not Deductible</u>
Under - \$ 50,000	\$ 6,200
\$ 50,000 - \$149,999	\$18,600
\$150,000 - \$299,999	\$27,900
\$300,000 - \$499,999	\$41,900
\$500,000 - \$749,999	\$46,500
\$750,000 - \$999,999	\$53,700
\$1,000,000 and Over	\$62,000

Licensee may not deduct any compensation paid to any person who has a stock or other ownership interest in Licensee or in the station of 40% or more.

(2) The actual payment by the Station to an independent supplier of news ticker or news audio service (i.e., AP or UPI or other similar agencies) for news ticker or news audio service.

(3) The following actual costs incurred by the Station for a specific program: (a) payments to the telephone company or like transmission utility for remote pick-up necessary to broadcast such program from a point outside a studio of the Station; and (b) rights for broadcasting a sports or other special event.

(4) The following actual payments made by the Station to a wholly independent network not licensed by Society for a specific local program: (a) if such network is owned and operated by a college or university, the actual payment made by the Station to such college or university; (b) if such network is not owned and operated by a college or university, the actual payments made for talent and for broadcast rights (which may not exceed the amount actually paid to or for the original holder of the broadcast rights for the particular program), and the actual payments made to or for the telephone company or like transmission utility for interconnecting lines and remote lines necessary to broadcast the program from a point outside the studio of the Station, which may not exceed the amount actually paid to or for the telephone company or like transmission utility.

(5) The following actual costs incurred in connection with Licensee's occasional network programs: (a) the payments to its affiliated stations in connection with such programs; (b) the actual payments made for talent and broadcast rights (which may not exceed the amount actually paid to or for the original holder of such broadcast rights); and (c) the actual payments made to or for the telephone company or like transmission utility for interconnecting lines and remote lines necessary to broadcast that program from a point outside the studio of the Station, which may not exceed the amount actually paid to or for the telephone company or like transmission utility.

3. **Music Reports.** Licensee agrees to furnish to Society upon request a list of all musical compositions on Licensee's local radio programs, showing the title, composer and author of each composition. Licensee shall not be obligated to furnish such list for a period or periods which in the aggregate, exceed one month of any one calendar year during the term of this agreement.

4. Right to Restrict.

A. The members of Society shall have the right to restrict the radio broadcasting of compositions from musical comedies, operas, operettas and motion pictures, or any other composition being excessively broadcast, only for the purpose of preventing harmful effect upon other interests under the copyrights of such works; provided, however, that (1) the maximum number of compositions which may be restricted at any time shall not exceed 500; (2) limited licenses will be granted upon application to Society entirely free of additional charge as to restricted compositions, if and when the copyright owners thereof are unable to show reasonable hazards to their major interests likely to result from such radio broadcasting; (3) such right to restrict any such composition shall not be exercised for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition; (4) in no case shall any charges, "free plugs", or other consideration be required in respect of any permission granted to perform a restricted composition; and (5) in no event shall any composition, after the initial radio broadcast thereof, be restricted for the purpose of confining further radio broadcasts thereof to a particular artist, station, network or program.

B. Society reserves the further right in good faith to restrict the radio broadcasting of any composition, over and above the number specified in the previous paragraph, only as to which any suit has been brought or threatened on a claim that such composition infringes a composition not contained in the Society's repertory or on a claim that Society does not have the right to license the public performance of such composition by radio broadcasting.

5. License Fee.

A. In consideration of the license herein granted, Licensee agrees to pay to Society for each year during the term of this agreement a fee which is the applicable percentage of "Revenue Subject to Fee", or Minimum Fee, whichever is greater:

<u>Year</u>	<u>Percentage Fee</u>	<u>Minimum Fee</u>
1991	1.575%	\$400
1992	1.585%	
1993	1.600%	
1994	1.605%	
1995	1.615%	

The minimum fee for each year 1992 through 1995 shall be the minimum fee for the prior year adjusted annually in accordance with any increase in the Consumer Price Index (National, all items) between the preceding October and the next preceding October.

B. In the event that Licensee's payment of fees under this agreement causes Society to incur a liability to pay a gross receipts, sales, use, business use, or other tax which is based on the amount of Society's receipts from Licensee, and (1) Society has taken reasonable steps to be exempted or excused from paying such tax; and (2) Society is permitted by law to pass through such tax to its licensees, Licensee shall pay to Society the full amount of such tax.

6. Reports and Payments.

A. On or before the first day of April in each year commencing 1992, Licensee shall send to Society a report of the license fee due for the preceding calendar year. Each such report shall be made by completing fully the Statement of Account form supplied free of charge by Society. A copy of the Statement of Account form is annexed and made a part of this agreement.

B. For each month during the term of this agreement, Licensee shall pay to Society on or before the first day of the following month, a sum equal to 1/12th of the license fee for the preceding calendar year (annualized for any reported period less than a year), adjusted in accordance with any increase in the Consumer Price Index (National, all items) between the preceding October and the next preceding October. If the report required by Paragraph 6.A. for any calendar year is not received by Society when due, the monthly payments shall be in the amount of the monthly payments due for the preceding year, plus 24%, and payments at that rate shall continue until the late report is received by Society. If the station commenced broadcasting after January 1, 1991, Licensee shall furnish Society with a good faith estimate of its revenue for the first year of operation and the monthly payments during the first calendar year of broadcasting shall be 1/12th of the fee provided in Paragraph 5.A. for a station having such Revenue Subject to Fee.

C. Each report required by Paragraph 6.A. of this agreement for the preceding calendar year shall be accompanied by payment to Society of the license fee due over and above all amounts paid to Society for the preceding calendar year pursuant to Paragraph 6.B. If the amount paid by Licensee for the preceding calendar year exceeds the license fee due for the year, Licensee shall apply the excess payment against future monthly

payments. If the excess payment is greater than three monthly payments required by Paragraph 6.B., Society shall, upon written request of Licensee, refund the excess payment.

D. If any payment required under Paragraph 6.B. or 6.C. is not received by Society before the first day of the month following the date when the payment was due, Licensee agrees to pay Society a finance charge of 1½% per month from the date the payment was due.

E. License fee reports shall be made on a billing basis by all stations, except that any station may report on a cash basis if (1) its books have been kept on a cash basis and (2) it reported to Society only on a cash basis and at no time on a billing basis during the entire term of its agreement with Society ending February 28, 1977, and continuously thereafter. All billings made subsequent to the termination of this agreement with respect to radio broadcasts made during the term hereof shall be accounted for by Licensee as and when such billings are made by Licensee.

F. If a report required by Paragraph 6.A. of this agreement is not received by the Society within 30 days of the date that the report was due, Society may give notice to Licensee that Licensee has an additional 30 days within which to submit the report on either the "Adjusted Gross Revenue" or "Adjusted Gross Revenue less itemized deductions" basis. If Licensee fails to submit the report within the additional 30-day period, the report must be on the "Adjusted Gross Revenue" basis.

G. Licensee shall submit a single license fee report for:

(1) AM and FM stations owned by Licensee in the same city if the combined "gross revenue" for the stations is less than \$75,000; or

(2) all stations owned by Licensee that simultaneously broadcast programs for 80% or more of the time the stations are on the air concurrently.

If Licensee acts as a time broker for one or more other radio stations that are licensed pursuant to this form of local station blanket radio license, Licensee shall include in its license fee reports for the Station all gross revenue relating to periods on such other station or stations that are simulcast or are sold in combination with the Station. All other stations owned by Licensee, or for which Licensee acts as a time broker, shall report and pay separately, and be treated for all purposes as separate stations.

7. Audits.

A. Society shall have the right by its duly authorized representatives, at any time during customary business hours, to examine the books and records of account of Licensee only to such extent as may be necessary to verify any report required by this agreement. Society shall consider all data and information coming to its attention as a result of any such examination of books and records as completely and entirely confidential.

B. The period for which the Society may audit shall be limited to the four calendar years reported preceding the year in which the audit is made; provided however, that if an audit is postponed at the request of the Station the Society shall have the right to audit for the period commencing with the fourth calendar year reported preceding the year in which notification of intention to audit was first given by the Society to the Station. This limitation shall not apply if the Station fails or refuses after written notice from the Society to produce the books and records necessary to verify any report or statement of accounting pursuant to the agreement.

C. The period for which Licensee may correct computational errors, or errors relating to deductions permitted under the agreement on its license fee reports shall be limited to four calendar years preceding the year in which such corrected reports were submitted. This provision shall not be construed to permit a station to submit a report on the "Adjusted Gross Revenue less itemized deductions" basis for a period previously reported on the "Adjusted Gross Revenue" basis.

D. In the event the Society's audit of Licensee's books and records discloses that Licensee has underpaid license fees due Society:

(1) Licensee shall pay a finance charge on such additional license fees of 1½% per month from the date(s) such fees should have been paid pursuant to this agreement if the underpayment is 5% or more, but not less than \$1000.

(2) Licensee shall pay a finance charge on such additional license fees of 1½% per month beginning thirty (30) days after the date Society bills such additional license fees to Licensee if the underpayment is less than 5% or less than \$1000.

(3) If Licensee disputes all or part of the Society's claim for additional fees pursuant to an audit, Licensee shall, within thirty (30) days from the date Society bills such additional fees, (i) advise Society, in writing, of the basis for such dispute and (ii) pay to Society any fees indisputably owed together with any applicable finance charges on additional fees indisputably owed in accordance with subparagraph (1) above. If there is a good faith dispute between Licensee and Society with respect to all or part of the additional fees Society has billed pursuant to this Paragraph, no finance charges shall be billed with respect to such disputed fees for a period beginning on the date Society bills such disputed fees and ending sixty (60) days from the date Society responds to Licensee's written notification of the existence of a dispute.

(4) Finance charges computed in accordance with this Paragraph and pertaining to additional fees which Licensee disputes in accordance with subparagraph (3) above shall be adjusted pro-rata to the amount arrived at by Licensee and Society in resolution of the dispute with respect to additional fees due.

8. **Breach or Default.** Upon any breach or default by Licensee of any terms herein contained relating to the reports, accountings or payments required to be made by Licensee, Society may give Licensee thirty (30) days' notice in writing to cure such breach or default, and in the event that such breach or default has not been cured within said thirty (30) days, Society may then promptly terminate this license.

9. **Time Brokerage Arrangements.** If Licensee enters into a time brokerage arrangement as defined in Paragraph 2.F. above, the license granted by this agreement shall automatically terminate thirty (30) days after the commencement date of the time brokerage arrangement unless Licensee has furnished to Society a complete copy of the time brokerage agreement and Licensee and Time Broker have executed a letter to Society in the form annexed and made a part of this agreement requesting amendment of the license agreement to add Time Broker as a party. When such a letter has been fully executed by Licensee, Time Broker and Society, this agreement shall be deemed amended accordingly.

10. **Indemnity Clause.** Society agrees to indemnify, save and hold harmless and to defend Licensee, its advertisers and their advertising agencies, and its and their officers, employees and artists, from and against all claims, demands and suits that may be made or brought against them or any of them with respect to the performance under this agreement of any compositions in the Society's repertory which are written or copyrighted by members of Society. Licensee agrees to give Society immediate notice of any such claim, demand or suit and agrees immediately to deliver to Society all papers pertaining thereto. Society shall have full charge of the defense of any such claim, demand or suit and Licensee shall cooperate fully with Society in such defense. Licensee however shall have the right to engage counsel of its own at its own expense who may participate in the defense of any such action. Society agrees at the request of Licensee to cooperate with and assist Licensee, its advertisers and their advertising agencies and its and their officers, employees and artists in the defense of any action or proceeding brought against them or any of them with respect to the performance of any musical compositions contained in the Society's repertory, but not copyrighted or written by members of Society. This Paragraph 10 shall not apply to performances of any works that may be restricted under Paragraph 4 of this agreement.

11. **Rights of Termination.**

A. In the event of the termination or suspension of the governmental licenses covering the Station or any substantial alteration or variation of the terms and conditions thereof, or any major interference with the operations of the Station due to governmental measures or restrictions, Licensee shall have the right to terminate this agreement upon seven (7) days' written notice.

B. In the event of:

(1) any major interference with the operation of Society in the state, territory, dependency, possession or political subdivision in which the Station is located, by reason of any law of such state, territory, dependency, possession or political subdivision; or

(2) any substantial increase in the cost to the Society of operating in such state, territory, dependency, possession or political subdivision, by reason of any law of such state, territory, dependency, possession or political subdivision which is applicable to the licensing of performing rights,

Society shall have the right to terminate this agreement on thirty (30) days' written notice to Licensee.

12. **Notices.** All notices required or permitted to be given by either of the parties to the other under this agreement shall be duly and properly given if:

- A. mailed to the other party by registered or certified United States mail; or
- B. sent by electronic transmission (i.e., Mailgram, facsimile or similar transmission); or
- C. sent by generally recognized same-day or overnight delivery service,

addressed to the party at its usual place of business.

13. **Successors and Assignees.** This agreement shall enure to the benefit of and shall be binding upon the parties and their respective successors and assignees, but no assignment shall relieve the parties of their respective obligations under this agreement.

14. **Per Program License.** The "local station per program license" for the term ending December 31, 1995 is being offered to Licensee simultaneously with this agreement. In accepting this agreement, Licensee acknowledges that it has a choice of entering into either this agreement or the per program license with Society; that Licensee has the opportunity to negotiate for separate licenses with the individual members of Society; and that Licensee is voluntarily entering into this agreement with Society. Licensee may substitute the per program agreement in place of this agreement by giving Society written notice at least 60 days prior to the commencement of any month during the term of this agreement. In such event, effective with the commencement of that month, the per program agreement shall be in full force and effect between Licensee and Society for the balance of the license term.

15. **Applicable Law.** The fees set forth in this agreement have been approved by the United States District Court for the Southern District of New York as reasonable and non-discriminatory in accordance with the Amended Final Judgment in *United States v. ASCAP*. The meaning of the provisions of this agreement shall be construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, this agreement has been duly executed by Society and Licensee this _____ day of _____, 1994

JUN 24 1994

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By _____

LICENSEE

Hicks Broadcasting of Indiana L.L.C.

(Full corporate or other name of station owner)

By _____

Partner

- (a) If corporation, state corporate office held;
- (b) If partnership, write word "partner" under signature of signing partner;
- (c) If individual owner, write "individual owner" under signature.

TIME BROKERAGE AMENDMENT LETTER

(Letterhead of Licensee)

Date _____

Dear ASCAP:

1. Radio station _____ ["STATION"] has entered into a time brokerage agreement with _____ ["BROKER"] for the period _____ through _____.

2. STATION and BROKER wish to add BROKER as a party to the Local Station Radio License Agreement in effect between STATION and ASCAP ("the license") with all of the rights and obligations of the Licensee as set forth in the license for the full period of the brokerage agreement referred to in (1) above.

3. We agree that for all periods that STATION simulcasts or is sold in combination with another radio station owned or operated by BROKER ["BROKER STATION"] that has an ASCAP Local Station Radio License we shall report all gross revenue of STATION as follows:

a. All BROKER revenue relating to STATION will be included in BROKER's license fee reports for BROKER STATION. If such revenue constitutes all gross revenue for STATION, no license fee or license fee reports will be required of STATION.

b. All of STATION's other revenue (as defined in the license) will be included in STATION's license fee reports.

c. Amounts payable by BROKER to STATION as consideration for the time brokerage agreement shall not be reportable by STATION or deductible by BROKER STATION.

d. In the event that STATION and BROKER STATION have different forms of ASCAP license, all BROKER revenue relating to programs of STATION which simulcast or are sold in combination with BROKER STATION shall be apportioned between STATION and BROKER STATION in the same ratio as the adjusted gross revenue of STATION and BROKER STATION bear to each other for the most recent year prior to the brokerage agreement reported by STATION and BROKER STATION to ASCAP (annualized for any period less than a year). Any such revenue apportioned to, and reported for, STATION pursuant to this paragraph shall not be reportable by BROKER on its license fee reports for BROKER STATION.

4. If STATION fully simulcasts programs broadcast by BROKER STATION and has no separate programs, STATION and BROKER agree to maintain the same form of ASCAP license (blanket or per program) for STATION as BROKER has for BROKER STATION. In the event that BROKER STATION has a different form of license for BROKER STATION at the time this agreement is executed, this letter shall constitute our notice in accordance with the license agreement (Paragraph 14 of the blanket license or Paragraph 15 of the per program license) to substitute the other form of license in place of our current agreement. In the event that STATION and BROKER STATION have the same form of license at the time this agreement is executed, and BROKER STATION subsequently provides notice pursuant to its license agreement to substitute the other form of license, said notice shall be deemed to apply as well to STATION.

5. For all periods that STATION has a per program license agreement, BROKER STATION shall submit the reports required by Paragraph 5 of the per program license for all programs provided by BROKER STATION which are broadcast by STATION, and STATION shall submit such reports for all other programs broadcast by STATION. If STATION fully simulcasts programs broadcast by BROKER STATION and has no separate programs, and if all revenue relating to STATION is included in BROKER's license fee reports for BROKER STATION in accordance with Paragraph 3.a. above, STATION shall not be required to submit separate reports pursuant to Paragraph 5 of the per program license.

6. STATION and BROKER jointly designate the following single address for billing and other regular correspondence, and the following single address for any notices in accordance with the license agreement (Paragraph 12 of the blanket license or Paragraph 13 of the per program license):

Billing Address: _____ Notice Address: _____

Please indicate your consent to the amendment of our license agreement in accordance with this letter by countersigning the letter in the space provided below and returning a copy to us.

Very truly yours,
(LICENSEE)

By _____
(BROKER)

Dated: _____ By _____

The undersigned, American Society of Composers, Authors and Publishers, hereby consents and agrees to the amendment of the above mentioned license agreement.

American Society of Composers,
Authors and Publishers

Dated: _____ By _____

PATH01635



SESAC

July 28, 1994

Mr. David Hicks
Partner/President
Hicks Broadcasting of Indiana LLC
P.O. Box 487
Elkhert, IN 46515

Re: WRBR-FM, South Bend, IN.

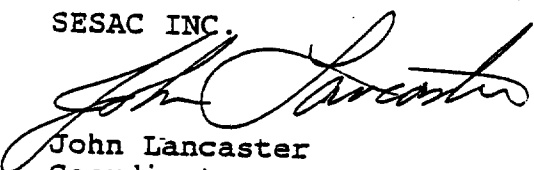
Dear Mr. Hicks:

Thank you for your cooperation in returning the signed Assumption Agreement for your station. I am enclosing a countersigned copy for your legal files. The next invoice you receive will reflect the status of your account.

If we can be of assistance in any way, please do not hesitate to contact us. We look forward to working with you for many years to come.

Sincerely,

SESAC INC.


John Lancaster
Coordinator
Licensing Administration

Enc.

Federal Communications Commission	
Document No. <u>MM-98-66</u>	Exhibit No. <u>40</u>
Presented by <u>Parthinder</u>	
Disposition	Identified <input checked="" type="checkbox"/>
	Received <u>X 11-6-98</u>
	Rejected <input type="checkbox"/>
Reporter <u>G. Holmes</u>	
Date <u>11-6-98</u> <u>10-26-98</u>	

SESAC, INC. BROADCASTING PERFORMANCE LICENSE ASSUMPTION AGREEMENT

New York, New York
May 10, 1994

AGREEMENT made in New York, New York on May 10, 1994, between SESAC, Inc. ("SESAC"), a New York corporation with offices at 421 West 54th Street, New York, New York 10019 and Hicks Broadcasting of Indiana LLC ("New Owner"),

CHECK PROPER BOX AND COMPLETE:

() a corporation duly organized and existing under the Laws of the State of _____,

(x) a partnership/^{limited liability company} composed of David Hicks, Alec Dille, John Dille IV, and Sarah Dille) Dunkel

() An individual residing at _____,

with principal offices at 237 Edison Road, Suite 200,
City of Mishawaka, State of IN, Zip Code 46545.

The Parties hereto mutually agree as follows:

WHEREAS, Booth American Company ("Old Owner") has assigned to New Owner and New Owner has assumed the FCC license for Station WRBR (FM), P.O. Box 179, South Bend, IN, and

WHEREAS, Old Owner has also assigned and New Owner has also assumed the SESAC Broadcasting Performance License dated February 29, 1980 for said station effective as of April 1, 1994, and

WHEREAS, pursuant to said assignment and assumption New Owner shall be responsible for the payment of all license fees payable to SESAC from and after April 1, 1994; and

WHEREAS, New Owner also agrees that in the event that SESAC is determined by the taxing authority or courts of any state in which New Owner conducts its operations to be liable for the payment of a gross receipts, sales, use, business use or other tax which is based on the amount of SESAC's receipts from New Owner, then New Owner shall reimburse SESAC, within thirty (30) days of demand therefor, for New Owner's pro rata share of any such tax derived from receipts received from New Owner.

NOW THEREFORE, SESAC hereby consents to the aforesaid assignment and assumption of its Broadcasting Performance License.

Hicks Broadcasting of Indiana LLC
New Owner (Corporate Name)

SESAC, Inc.

By: [Signature]

By: [Signature]

Title: Partner

Title: President and C.O.O.

David Hicks, Partner
Printed Name and Title of Person Signing Above

IMPORTANT INFORMATION ABOUT YOUR SESAC LICENSE

Your SESAC Performance License provides your station with permission to broadcast (publicly perform) any and all copyrighted music represented by SESAC during the term of the License. Here are some highlights to help you understand and comply with the License

TERM

This is a five-year renewable license.

FEE

Your license fee is based on two factors:

- 1) the station's highest one minute spot rate as published in Standard Rates and Data. If your spots are not published in SRDS, we will accept your rate card or other formal verification.
- 2) the market classification which is based on the population of the station's FCC city of license

FEE ADJUSTMENT

Your fee determinants will be reviewed annually at the anniversary date of your license, and any necessary adjustment in your fee will be made at the time. If your rates are not published in SRDS, and there has been a change in your highest one-minute spot rate, it is your responsibility to provide us with updated rate information.

PAYMENT

Your monthly license fee is due in advance. You will receive an invoice prior to the beginning of each month reflecting your next month's fee and payments received before the 15th of the previous month. Itemized invoices are available upon request.

****COMMUNICATE!****

Please notify us if:

- your address changes
- your telephone number changes
- your call letters change
- you change frequency
- the station's FCC license is reassigned
- you suspend broadcast operation for any extended period

It is important that we communicate with each other. If you have any questions at all about your license please feel free to call us at any time.

NASHVILLE - 1-800-826-9996
615-320-0055
NEW YORK - 212-586-3450

IRWIN, CAMPBELL & TANNENWALD, P.C.

1320 EIGHTEENTH STREET, N.W.

SUITE 400

WASHINGTON DC 20036

PHONE (202)728-0400

Invoice submitted to:
David Hicks
7463 Cottage Oak Drive
Portage MI 49002

Invoice # 15154

July 10, 1995

In reference to: General Legal Work - #36900

For Legal Services Rendered from June 1 to June 30, 1995

Total Hours and Amount

		Hrs/Rate	Amount
6/29/95	PT Phone Watson, confer Campbell re annual employment report and ownership report	0.10 225.00/hr	22.50
		<hr/> 0.10	<hr/> \$22.50

Additional charges:

- Postage	0.32
- Facsimile	2.50

Total costs	<hr/> \$2.82
-------------	--------------

Total amount of this bill	<hr/> \$25.32
---------------------------	---------------

HICKS000502

Report

Case No. 86-9-17

Date 10-26-82

Reporter G. H. M.

Disposition Refused

Presented by M. W. M.

Identified Refused

Federal Communications Commission
Exhibit No. 86-9-17

David Hicks

Page 2

Amount

Balance due by August 6, 1995

\$25.32

HICKS000501



IRWIN, CAMPBELL & TANNENWALD, P.C.

1320 EIGHTEENTH STREET, N.W.

SUITE 400

WASHINGTON DC 20036

PHONE (202)728-0400

Invoice submitted to:
David Hicks
7463 Cottage Oak Drive
Portage MI 49002

Invoice # 16117

August 31, 1995

In reference to: General Legal Work - #36900

For Legal Services Rendered from August 1 to August 31, 1995

Total Hours and Amount

		Hrs/Rate	Amount
8/2/95	ACC Prepare annual ownership report filing; review files and call re same	0.40 190.00/hr	76.00
8/28/95	BAS Regulatory fee preparation for filing.	0.70 110.00/hr	77.00
		<hr/> 1.10	<hr/> \$153.00

Additional charges:

- Facsimile	8.00
- Telephone	1.18
- FCC Filing Fee	45.00

Federal Communications Commission

Doc No. MM-98-66 Exhibit No. 42

Presented by Patricia Ainder

Disposition { Identified ☒

Received X 11-5-98

Rejected ☐

Reporter G. Holmes

Date 11-5-98 10-26-98

HICKS000499

David Hicks

Page 2

Amount

- Messenger	26.00
- Office Copying	2.40
Total costs	<u>\$82.58</u>

Total amount of this bill	<u>\$235.58</u>
---------------------------	-----------------

Previous balance	(\$36.16)
------------------	-----------

Balance due by October 5, 1995	<u><u>\$199.42</u></u>
--------------------------------	------------------------

HICKS000501



Radio Program License Agreement

THIS RADIO PROGRAM LICENSE AGREEMENT ("Agreement") made effective as of this 8th day of February, 1996 states the agreement between Hicks Broadcasting of Indiana, LLC, Licensee of radio station WRBR-FM (Hicks Broadcasting of Indiana, LLC and WRBR-FM are hereinafter referred to as "Station"), located at One Edison Center, Suite 200, 237 Edison Road, Mishawaka, Indiana 46545 and Secret Communications Limited Partnership located at 312 Walnut Street, Cincinnati, Ohio 45202 (hereinafter "Secret" or "Distributor").

In consideration of the mutual promises set forth herein the parties agree as follows:

1. **License Grant:**

Subject to the terms and conditions herein, Distributor grants Station, and Station accepts, a license for the radio exhibition over Station's facilities of the program entitled "The Bob and Tom Show" (as currently broadcast by Radio Station WFBQ-FM, Indianapolis, Indiana, or on such other station as it may be broadcast by Distributor) (hereinafter "Program" or "Programs") and "Best of" shows compiled by Distributor or Station from portions of "The Bob and Tom Show" (hereinafter "Best Of Programs") for broadcast during the term hereof under the terms and conditions set forth herein and for the number of broadcasts expressly set forth herein and for no other purpose. All rights not hereby granted are reserved by Distributor. All right, title and interest in the Programs and Best Of Programs so delivered to Station shall, at all times, remain the property of Distributor, subject only to Station's right to make use of the Programs and Best Of Programs in accordance with the terms of this Agreement, and in no event is this Agreement intended, nor shall it be construed, to transfer any ownership rights or interest in the Programs and Best Of Programs to the Station. The Programs and Best of Programs are the sole and exclusive property of Distributor. Station shall not assert any claim to any goodwill, reputation or ownership thereof by virtue of the licensed use. Station shall not dispute or impugn in any way Distributor's rights in such Programs and Best of Programs or the right of Distributor or other licensees of Distributor to broadcast such Programs and Best of Programs. All uses of the Programs and Best Of Programs shall inure to the benefit of Distributor and Station acknowledges and agrees that, to the extent that it may obtain any rights whatsoever as a result of its broadcast of the Programs and Best of Programs, it will assign any such rights that it may have attained to Distributor upon the expiration or termination of the Agreement.

2. **Number of Programs:**

Distributor shall make available to Station by means of satellite transmission five (5) original Programs on Monday through Friday each week during the term hereof, except that Distributor shall not supply an original program on those days on which Bob Kevoian and Tom Griswold do not broadcast a live Program due to vacation, holiday, illness or other absence of both performers. For use on those days on which Distributor does not supply an original Program as a result of such absences, Distributor shall

Report No. 11-S-98
Disposition Refused
Presented by 10-26-98
Identified 10-26-98
Exhibit No. 11-S-98
Federal Communications Commission

provide to Station Best Of Programs hosted by other Station WFBQ-FM talent (or such other station on which Distributor may broadcast the Program) which shall include highlights of previously broadcast Programs. Such programs shall be provided by satellite transmission or other mutually agreed-to means.

3. Number of Runs:

Station shall not broadcast any Program or parts thereof more than one time, provided only that the Station may utilize discrete portions of the Programs for legitimate promotion of the Programs and may assemble a "Best Of" compilation for one four hour broadcast on the next succeeding Saturday or Sunday following the original broadcast thereof by Station.

4. Running Time of Each Program:

Each Program shall run for a minimum of four (4) hours.

5. Broadcast Dates and Times:

Station shall broadcast the Program, on a "live" basis with a delay of up to thirty (30) seconds on the same day it is received from Distributor, Monday through Friday, between the hours of 6:00 A.M. and 10:00 A.M. Eastern Standard Time, subject to the terms and conditions herein, except that Station shall not broadcast on a "live" basis on those days when Distributor does not supply an original "live" program and during such periods when, by operation of Daylight Savings Time or otherwise, the Station and WFBQ-FM, or such other station from which Distributor shall broadcast the Program, shall lie in different time zones, in which event the Station may reschedule broadcast of the "live" program to coincide with the Station's morning drive time. In addition, the Station may, at its option, broadcast beyond the scheduled conclusion of the 6:00 a.m. to 10:00 a.m. Program when "The Bob and Tom Show" continues after 10:00 a.m. Eastern Standard Time, subject to all of the other terms and conditions of this Agreement.

The broadcast by the Station of the Program as set forth in this Paragraph 5 is an essential element of this Agreement. Station understands and agrees that it may not obtain the Program under this Agreement and "shelve" it and not broadcast it.

6. License Term:

License Commencement Date: February 19, 1996, 12:00 a.m.

License Termination Date: February 18, 1998, 11:59 p.m.

Upon the expiration of the License Term, Station shall have the right of first refusal to meet, in all material respects, any bona fide written offers that Distributor may receive from any other station within Station's Exclusive Territory (as defined in Paragraph 8) to enter into a similar radio license agreement for the Programs and Best of Programs and, should Station meet any such offers, Station shall thereby obtain the right to extend the License Term for such term and under such terms and conditions as the parties shall then agree, in writing, signed by both parties.

7. **Consideration:**

In full consideration of the license herein granted, Station agrees to pay Distributor Eighty Thousand Dollars (\$80,000) annually for the period from February 19, 1996 through February 18, 1997, and Ninety Thousand Dollars (\$90,000) annually for the period from February 19, 1997 through February 18, 1998, which shall be payable to "Secret Communications Limited Partnership" pro rata on a monthly basis to Distributor, in advance on the first day of each month, addressed to Neil McClung, WFBQ/WRZX/WNDE, 6161 Fall Creek Road, Indianapolis, Indiana 46220 (or such other address as Distributor shall subsequently specify in writing).

STARTED BRO-
+ STATED
ON 3/1
See ATT

8. **Exclusivity:**

Distributor will not license or otherwise authorize the radio broadcast of the Programs for over-the-air reception by the public over any radio station whose main transmitter is located within the following counties in Michigan: Barrien, Cass and St. Joseph; and in Indiana: La Porte, St. Joseph, Elkhart, La Grange, Starke, Marshall, Kasciusko, Pulaski and Fulton counties (collectively, the "Exclusive Territory").

9. **Delivery of Programs:**

(a) If the Program is intended for live broadcast, Distributor shall deliver the Programs to Station via satellite. Station understands and agrees that such delivery shall require that Station purchase, install and maintain at Station's expense a Comstream digital VSAT downlink system. Station further agrees that all equipment, including, but not limited to, installation costs, repair and maintenance expenses, associated with Station's downlink equipment shall be the sole responsibility of Station. Distributor agrees that, upon the completion and signing of this Agreement, it will order and have programmed the Comstream digital VSAT terminal. Station agrees to reimburse the Distributor for any expenses associated with the order or programming of such equipment. Notwithstanding anything to the contrary contained in this Agreement, Distributor makes no warranties or other guarantees with respect to any equipment or software associated with the transmission of the Programs.

(b) If the Program is a Best Of Program of recorded highlights or other Program intended for delayed broadcast, the Programs may be delivered to Station, at

Distributor's discretion, by the foregoing means or by compact disc or audio cassette, or other mutually agreed-to means (the "Pre-recorded Program"), but must be delivered not less than three (3) days in advance of the scheduled broadcast date if delivered by tape, compact disc or other similar means. All recorded Programs, Best Of Programs or Program excerpts shall remain in Station's possession a maximum of five (5) days after the termination or expiration of this Agreement, at which time Station shall return or destroy (as Distributor may elect) all Programs, Best of Programs and Program excerpts at Station's expense. In the event any such recordings are either lost or destroyed, Station will furnish Distributor with a certificate to that effect.

(c) All Programs supplied hereunder shall conform to the technical standards generally accepted in the trade for radio transmission.

(d) All rights not hereby granted are reserved by Distributor. All right, title and interest in the Programs and Best Of Programs so delivered to Station shall, at all times, remain the property of Distributor, subject only to Station's right to make use of the Programs and Best Of Programs in accordance with the terms of this Agreement, and in no event is this Agreement intended, nor shall it be construed, to transfer any ownership rights or interest in the Programs and Best Of Programs to the Station. The Programs and Best of Programs are the sole and exclusive property of Distributor. Station shall not assert any claim to any goodwill, reputation or ownership thereof by virtue of licensed use. Station shall not dispute or impugn in any way Distributor's rights in such Programs and Best Of Programs or the right of Distributor or other licensees of Distributor to broadcast such Programs and Best of Programs. All uses of the Programs and Best of Programs shall inure to the benefit of Distributor and Station acknowledges and agrees that, to the extent that it may obtain any rights whatsoever as a result of its broadcast of the Programs and Best of Programs, it will assign any such rights that it may have attained to Distributor upon the expiration or termination of the Agreement.

10. Editing and Rejection of Program Content:

(a) Each live Program, Best Of Program and pre-recorded Program shall be broadcast under the title supplied by Distributor and shall be broadcast in its entirety in a single continuous time period interrupted only by commercial, public service and station break announcements at times authorized by Distributor. It is further specifically understood and agreed that Station shall not be permitted to edit the Program for the purpose of adding commercial time to the Program. Station shall not make any insertion which shall adversely affect the artistic quality of the Program or interfere with its continuity, and in any event, the Program may not be edited to accommodate such insertions. It is understood and agreed that Station shall broadcast the copyright notice, credits or billings that are incorporated into the Program by the Distributor, and in no event shall Station delete or reposition such copyright notices, credits or billings. Distributor agrees to take reasonably possible steps to pause before going into station breaks to permit Station to identify itself, and Station understands and agrees that it shall be permitted to edit the

Program for the purpose of eliminating references to WFBQ-FM or such other station from which Distributor may broadcast the Programs and replacing them with the Station's own identity. None of the foregoing language, nor that of any of the provisions of this Agreement, is intended, nor should it be construed, to restrict the Station's right to edit the Program as necessary to comply with any applicable laws or regulations, or to conform with definitions of community standards of suitable content as determined by Station.

(b) As set forth above, Station also shall be permitted the right to record bits or other portions from the Programs to be used as promos to promote the Programs, and shall be permitted further the right to produce Best Of Programs compiled from portions of the Programs, subject to the terms and conditions of Paragraph 1. Any and all such recordings shall be returned to the Distributor upon the termination or expiration of this Agreement in accordance with the provisions of Paragraph 9(b).

11. Broadcast Rights:

(a) Station agrees that it shall broadcast each Program licensed hereunder solely from the originating transmitter and antenna of the Station specified herein for over-the-air reception by the public.

(b) Station further agrees that it shall not consent to the broadcast of any Program into any place where the reception of the broadcast by the public is made subject to the payment of a fee for the specific purpose of listening to the Program; nor shall Station relay the broadcast of any Program to any other party. Station agrees that it will not cause, authorize or permit the duplication or recording of any Program, or any part thereof, or use of any of the Programs for any purpose other than the purposes herein specified. Station shall not authorize others to broadcast any of the Programs over the facilities of any additional radio station, booster station, translator, cable radio system, or by any other device or method not expressly authorized hereunder.

(c) Station may only broadcast the Programs and Best of Programs on WRBR-FM, South Bend, Indiana.

(d) Distributor expressly reserves to itself any and all rights in the Programs not herein specifically granted to Station.

12. Force Majeure:

In the event that Station is prevented from making any broadcast hereunder, or Distributor is prevented from making available any Programs hereunder to Station in the manner contemplated by this Agreement, due to any of the following reasons: act of God; unavoidable accident; epidemic; fire; blackout; act of public enemy; war, riot or civil commotion; enactment, rule, order or act of government or governmental

instrumentality or tribunal; strike, lockout or other labor dispute; inclement weather; failure of technical facilities; failure of essential production or technical personnel to appear or be available for production or broadcast; or other cause of a similar or different nature which is beyond Station's or Distributor's control, then in any such event the same shall not constitute a breach of this Agreement and Station or Distributor may suspend this Agreement during the period of force majeure. In this event, Station shall not be obligated to make any payment to Distributor with respect to any period of any such suspension and Distributor shall not be obligated to make the Program available to Station. No such suspension shall operate to extend the term of this Agreement. In the event the period of such suspension continues in excess of thirty (30) consecutive days, Distributor and Station each shall have the right to terminate the Agreement without the payment of any penalty or termination fee, upon not less than two (2) weeks prior written notice to the other party, and neither party shall have any further obligation or liability hereunder except as may have accrued up to the effective date of such termination, including, without limitation, those obligations set forth in Paragraphs 9(b), 13(b), 13(d)(iii), 14, 17 and 18 of this Agreement, which shall survive the termination or expiration of this Agreement.

13. Warranties and Representations:

(a) Distributor warrants that it has the right to grant the license for broadcasting the Programs hereunder, and that there is no outstanding contract, commitment, arrangement or legal impediment of any kind which is in conflict with this Agreement or which might in any way limit, restrict or impair the rights granted to Station hereunder. Distributor warrants that as long as this Agreement remains in effect, it will not grant or attempt to grant to any person, firm or corporation rights of any kind in the Programs hereunder, the exercise of which will derogate from or be inconsistent with the rights granted to Station hereunder.

(b) Distributor warrants that the performing rights in all musical compositions contained in the Programs hereunder are either controlled by BMI, ASCAP or SESAC, are in the public domain or are controlled by Distributor to the extent required for the purpose of this Agreement. Distributor does not represent or warrant that Station may exercise the performing rights to the music without the payment of a performing rights or synchronization rights royalty or license fee. Station shall, at its sole cost and expense, secure any performing or synchronization rights licenses necessary for the broadcast of the music contained in each Program and Best Of Program and shall hold Distributor free and harmless from any liability or damage arising from its failure to do so.

(c) Distributor warrants that, in the production and making of the Programs licensed hereunder, all applicable collective bargaining agreements and applicable rules and regulations of any unions having jurisdiction were complied with in all material respects; that all persons under Distributor's control who performed services in or in connection

with the Programs hereunder received full payment with respect thereto and with respect to the broadcast of the Programs as provided in this Agreement; and that no fee, compensation or any other payment whatsoever will ever be payable by Station to any producer, director, actor, writer or any other person under Distributor's control who performed services for the Programs by reason of the broadcast thereof as provided in this Agreement.

(d) Station represents and warrants to Distributor as follows: (i) Station has the requisite power and authority to enter into this Agreement and to consummate the transactions and perform the obligations contemplated hereby; (ii) Station has maintained and throughout the term hereof will continue to maintain in full force and effect such licenses for the operation of Station, including performing rights licenses, as now are or hereinafter may be in general use by radio broadcasting stations and necessary for Station to broadcast the Programs contemplated hereby; (iii) Station will not cause or authorize the duplication or recording by third parties of any Program or any portion thereof or the use of any Program for any purposes other than the purposes set forth herein; (iv) Station's performance of its obligations under this Agreement will not violate any law or regulation; and (v) Station has in force Media Errors and Omissions insurance for at least \$1,000,000 which covers broadcast of the Programs and Best Of Programs.

14. Indemnification:

(a) Station hereby indemnifies and holds Distributor, its partners, officers, agents, employees, stockholders and successors, and Bob Kevoian and Tom Griswold, and each of their heirs, administrators and assigns, harmless from and against any and all claims, damages, liabilities, costs and expenses (of any nature whatsoever and including attorneys' fees) arising out of (i) the broadcast during the Programs by the Station over the Station's frequency of any material, including, but not limited to, commercial copy or promotional materials supplied by Station; (ii) the material breach by Station of any representation, warranty, covenant or other undertaking set forth in this Agreement; and (iii) the alteration or editing of the Program by Station. Station knowingly and willfully assumes any and all claims, damages, liability, costs and expenses (of any nature whatsoever and including attorneys' fees) arising from the broadcast by Station of any Program and Best of Programs over the Station's frequency or any material excerpted therefrom, including, but not limited to, any synchronization rights claims that might arise from Station's production of Best Of Programs.

(b) Station and Distributor shall promptly notify each other by certified or registered mail or via nationally recognized courier service of any claim or suit identified in Paragraph 14(a) or otherwise arising out of the broadcast of the Programs and Best of Programs over the Station's frequency which may be filed or threatened, or as to which either party gains knowledge. Station shall assume the defense of any such claims or litigation. The parties agree that, in defending or settling any such claims, neither party

may compromise any defense or other rights of the other party without first obtaining the prior written consent of the other party.

(c) Distributor agrees to indemnify and hold Station, its officers, agents, employees, stockholders and successors harmless from and against any and all claims, damages, liabilities, costs and expenses (of any nature whatsoever and including attorneys' fees) arising out of Distributor's breach of any representation, warranty, covenant or other undertaking hereunder. Distributor shall not indemnify Station for any liabilities, losses or other expenses not specifically included herein in this Subparagraph 14(c).

(d) Neither party shall, under any circumstances, be liable for loss of profits or consequential damages.

(e) The rights and obligations set forth in this Paragraph 14 shall survive the termination or expiration of this Agreement.

15. Infringement/Violation of Station's Exclusivity:

(a) In the event that a cable system, radio station or other entity violates Station's exclusivity to the Programs as contemplated herein, or in the event that any potential infringement, misuse or other illegal use of the Programs or Best Of Programs should come to Station's attention, Station shall promptly notify Distributor of the alleged violation.

(b) Upon receipt of such notice, Distributor may determine, in its sole discretion, how to proceed against the alleged infringer. Distributor may, at its own expense, institute such actions or proceedings as it deems appropriate or may, at any time, join in any proceedings instituted by Station and be represented by counsel of its choice. In the event that Distributor elects to institute proceedings or to join in proceedings instituted by Station, Station shall cooperate with Distributor's counsel and other representatives in such manner as may be reasonably requested by Distributor.

(c) Station shall not institute any suit or take any other action on account of any alleged infringements regarding the Programs or Best Of Programs without obtaining the prior written consent of Distributor. Any settlement or other agreement reached by Station shall include a release of any and all claims that were or might have been brought against Distributor and such settlement shall not be entered into without Distributor's prior written consent.

(d) In the event of the recovery in a joint action or proceeding of any damages or compensation for violation of Station's exclusivity, the amount so recovered shall be divided equally between the Distributor and Station after first deducting therefrom reasonable expenses and counsel fees. In the event that Station brings an action or proceeding of their own for violation of their exclusivity without being joined therein by

Distributor, Station shall pay its own expenses and counsel fees and shall be entitled to retain all damages or compensation recovered.

16. Promotion:

Station agrees that:

(a) Any advertising supplied by Station will not constitute an express or implied endorsement by Distributor, Secret, WFBQ-FM, Bob Kevoian and/or Tom Griswold of any products, services or sponsors; and,

(b) Station will not advertise or announce in any manner or media any Program title changed by Distributor or any Programs withdrawn by Distributor.

17. Promotional Material:

(a) If available, Distributor agrees to supply Station, free of charge, with samples of advertising and promotional material for the Programs licensed hereunder, including, but not limited to, stills, excerpts, synopses and the like. Station shall have the right, during the term of this Agreement, to request additional promotional material from Distributor, to the extent that such material may be produced by Distributor. Station shall have the right to use any part or all of such material for promotion of the Station's broadcast of the Program in any and all media in its original form or with suitable modifications, and shall have the right to reproduce the same for such use.

(b) It is expressly understood and agreed that Station has no right to use any Program elements for merchandising purposes. Such Program elements shall include, but not be limited to, the WFBQ-FM logo, the Program name, and Bob Kevoian's and Tom Griswold's names and likenesses.

18. Taxes:

Station shall pay and hold Distributor harmless from all taxes (excluding Distributor's income and franchise taxes), charges, assessments and other fees now or hereinafter imposed or based upon or resulting from the delivery, broadcast, possession or use by Station of the Programs licensed hereunder. Payment by the Station of the foregoing shall in no way diminish the license fees due to be paid to Distributor hereunder. To the extent that the payment of any of the foregoing is made by Distributor, Station shall reimburse promptly Distributor on demand. If Station shall fail to so reimburse Distributor, Distributor shall have all of the remedies provided by law and in equity. The rights and obligations set forth in this Paragraph shall survive the termination or expiration of this Agreement.

19. Payment of License Fees:

(a) In consideration of the license and other rights herein granted to Station, Station agrees to pay to Distributor the license fees as specified in Paragraph 7 herein. The time within which Station is required to make payment pursuant to this Agreement is of the essence and any failure to do so on the part of Station shall constitute a default, and immediately upon such default Distributor shall be released from any further obligations hereunder, including, but not limited to, any obligation to deliver the Program under the terms of Paragraph 9.

(b) Station shall pay the entire license fee stipulated herein, in consideration of the grant herein made by Distributor of the right and license to broadcast the Programs. The license fee shall be payable by Station in its entirety, except as contemplated under the Force Majeure provisions of Paragraph 12.

(c) The license granted hereunder to Station and the license fees fixed pursuant to the terms hereof are based upon the effective radiated power of the Station enumerated herein as of the date of the Agreement. If Station increases or decreases its effective radiated power or moves its tower or facilities or changes its coverage area (the "Facilities Change") subsequent to the date of this Agreement, Station must give Distributor written notice no less than fifteen (15) days prior thereto. Further, in the event of a Facilities Change that affects WFBQ-FM's prime rating area or the prime rating areas of any other syndication licensees of the Distributor, Distributor shall have the right to terminate this Agreement by giving Station written notice of its intent to terminate no less than thirty (30) days following Distributor's receipt of Station's notice of Facilities Change or its obtaining of knowledge of such change. Nothing in this Clause shall release or discharge Station from any of its obligations hereunder to pay license fees or any of its other obligations hereunder.

20. Termination:

(a) During the term of this Agreement, Station shall have the right within its sole discretion, including any future determination by the Station that the content of the Program has become morally objectionable to local community standards, to terminate this Agreement and, upon the payment of the lesser of Twenty-Five Thousand Dollars (\$25,000) or the license fees otherwise remaining under the Agreement if the License Term were to expire on the Termination Date agreed to in Paragraph 6 hereunder, Station shall be released from any further obligations hereunder, except as may have accrued up to the effective date of such termination, including, without limitation, those obligations set forth in Paragraphs 9(b), 13(b), 13(d)(iii), 14, 17 and 18 of this Agreement, which shall survive the termination or expiration of this Agreement.

(b) In addition, during the term of this Agreement, in the event that Bob Kevoian or Tom Griswold or both should cease to perform the Program, Station shall have the right

within its sole discretion to terminate this Agreement immediately and, shall be released from any further obligations hereunder, except as may have accrued up to the effective date of such termination, including, without limitation, those obligations set forth in Paragraphs 9(b), 13(b), 13(d)(iii), 14, 17 and 18 of this Agreement, which shall survive the termination or expiration of this Agreement, and except that such rights may not be exercised when Bob Kevoian and/or Tom Griswold are absent temporarily, including, but not limited to, absences due to vacation, holiday or illness.

(c) Distributor may, in its absolute discretion, withdraw immediately any licensed Program or, in the alternative, terminate this Agreement immediately: (A) if Distributor (i) ceases to produce the Program for syndication, (ii) determines that the syndication of the Program to the Station under the terms of this Agreement would violate any law, court order, government regulation or other ruling of any government agency or (iii) upon the advice of its FCC counsel, determines that withdrawal of the Program or termination of the syndication of the Program is necessary to preserve Distributor's FCC license; and (B) (i) if Station breaches or violates Section 5 above, or (ii) if Station's broadcast license from the Federal Communications Commission is not renewed or is cancelled or suspended for any reason. In addition, and except as otherwise provided in this Agreement, if the Station breaches any of its obligations hereunder, Distributor may give Station notice specifying in reasonable detail the breach and requesting that the breach be cured within five business days of the date of the notice. If Station fails to cure the specified breach within such five-day period, Distributor shall have the right to terminate this Agreement immediately.

(d) If any of the parties hereto should become insolvent or a petition in bankruptcy should be filed by or against it, or if either party executes an assignment for the benefit of creditors, or if a receiver is appointed for any property of either party, then the other party may, in addition to any other rights of whatever nature it may have at law or equity, at its option, terminate this Agreement and shall be released from any further obligations hereunder, except as may have accrued up to the effective date of such termination, including, without limitation, those obligations set forth in Paragraphs 9(b), 13(b), 13(d)(iii), 14, 17 and 18 of this Agreement, which shall survive the termination or expiration of this Agreement.

(e) In addition, the parties may have additional rights to terminate this Agreement under the terms of Paragraphs 12 and 19.

21. General Provisions:

(a) Except as provided herein, neither party may assign this Agreement without 30 days prior written notice to the other. It is expressly understood and agreed that the parties may assign this Agreement and all rights herein to any party acquiring a substantial portion of Distributor's or Station's radio business, or to any person controlling or controlled by Distributor or by Station. Should such assignment occur,

such assignment shall state expressly that the assignee assumes all obligations of the assignor as contained in this Agreement.

(b) This Agreement comprises the entire understanding with respect to this subject matter and shall supersede all other prior written or oral agreements. The parties agree that this Agreement includes no implied obligations and Station acknowledges that it has not relied on any representations not contained herein. No modifications or waiver of any terms hereof shall be effective unless in writing and signed by both parties. The waiver by either party of any breach or default by the other party may not be construed as a waiver or relinquishment by either party of any rights granted it under the Agreement, including the right to future performance of any such term or condition.

(c) The captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

(d) The parties agree to keep the specific terms of the license fees set forth in Paragraph 7 of this Agreement confidential and further agree that neither party shall disclose such terms to any third persons, including, but not limited to, any person employed by or affiliated with any other radio station, without the prior written consent of the other party, except that the parties may disclose the license fees under the Agreement to their respective legal counsel, or to the extent required by applicable law, rule or regulation or pursuant to court order or subpoena, and either party may furnish information contained in this Agreement to banks and other financial institutions as required in the ordinary course of business.

(e) All notices required to be given hereunder shall be addressed to Station at Station's address as designated herein on Page 1 of this Agreement, and to Secret at its current address as designated herein in Page 1 of this Agreement and to Christopher J. Wheat, WFBQ/WRZX/WNDE, 6161 Fall Creek Road, Indianapolis, Indiana 46220, or at any other address either party may advise the other party in writing. All notices shall be delivered via nationally recognized courier service or by registered or certified mail.

(f) This Agreement is made subject to all Federal, state and municipal laws or regulations now or hereinafter in force, shall be construed in accordance with the laws of the State of Indiana, and shall not be changed, modified or discharged in whole or in part except by an instrument duly signed by the parties. Any action or proceeding based upon or arising out of this Agreement shall be prosecuted in the courts of Indiana or the United States District Court for the Southern District of Indiana.

(g) Nothing in this Agreement is intended, nor shall it be construed, to create an employer/employee or joint venture relationship between or among the parties hereto.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to sign this Agreement on the date(s) written below.

Accepted and Agreed to:

Secret Communications
Limited Partnership

By: 

Robert B. Ridder, Jr.
Vice President

Dated: 2-20-96

Hicks Broadcasting of Indiana, LLC

By: 

David L. Hicks, President

Dated: 2-23-96

BQ-FM 94.7
ZX-FM 103.3
WNDE-AM 1260

SECRET
COMMUNICATIONS

WRBR-FM
One Edison Center, Suite 200
237 Edison Road
Mishawaka, IN 46545

351.50

REVISED INVOICE

3/27/16
OK YA
OK PER KAREN @ SECRET COMMUNICATIONS
\$ 3174.60

Please remit ~~\$3492.06~~ for Bob and Tom network for the month of March.

Thank you.

Mar

SK



IRWIN, CAMPBELL & TANNENWALD, P.C.
ATTORNEYS AT LAW
1730 RHODE ISLAND AVENUE, N.W.
SUITE 200
WASHINGTON, D.C. 20036
202-728-0400
FAX 202-728-0354

Date: March 28, 1996

TO: Dave Hicks (616) 451-0931
Dave Hayes (219) 294-4014

FROM: Alan C. Campbell (Direct Line: 202-728-0401, ext. 110)

RE: WRBR Annual Ownership Report

In addition to the renewal application which is due April 1, we need to file another annual ownership report certification. I would also like to file a separate EEO Form 396 for WRBR showing Hick Broadcasting as employing fewer than five fulltime employees. Dave Hayes did a report for WTRC/WBYT that also includes individuals who perform services for WRBR. However, I think we need a separate 396 report for Hicks Broadcasting as well. You can sign both of these and fax the signatures back to me.

We will advance the separate filing fee for the ownership certification (\$45.00). Please call me if you have any questions.

Total Number of Pages (including cover sheet): 4

Code: 36900

**IF YOU DO NOT RECEIVE ALL PAGES,
PLEASE CONTACT VANESSA AT (202) 728-0400.**

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

HICKS000406

Date 11-4-97	
Reporter G. Holmes	
Disposition 10-26-98	Rejected 11-2-98
Presented by D. Holmes	Identified 11-2-98
Exhibit No. 45	



IRWIN, CAMPBELL & TANNENWALD, P.C.

ATTORNEYS AT LAW
1730 RHODE ISLAND AVENUE, N.W.
SUITE 200
WASHINGTON, D.C. 20036
(202) 723-0400
FAX (202) 723-0354

ALAN C. CAMPBELL
(202) 723-0401 Ext. 110

July 5, 1996

FEDERAL EXPRESS

Mr. David L. Hicks
Stations WCUZ-AM/FM
140 Monroe Center
Grand Rapids, Michigan 49002

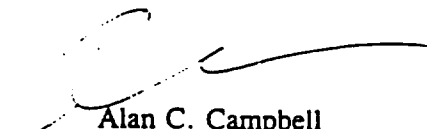
Re: WRBR Renewal

Dear Dave:

Steve received a call from the person processing the WRBR renewal. We filed the renewal with an EEO report that covered WTRC and WBYT as well as WRBR. She wants a separate 396 report for WRBR. One is enclosed for your signature. Please sign it and the covering amendment form and send them to me for filing.

Please call me if you have any questions.

Cordially yours,


Alan C. Campbell

Enc

cc Mr. Steve Kline ✓

Federal Communications Commission	
Subject No. <u>MM-98-06</u>	Exhibit No. <u>46</u>
Presented by <u>Pathfinder</u>	
Disposition	Identified <input checked="" type="checkbox"/>
	Received <u>X 11-6-98</u>
	Rejected <input type="checkbox"/>
Reporter <u>G. Holmes</u>	
Date <u>11-6-98</u>	<u>10-26-98</u>

HICKS000399
HICKS000399

BROADCAST EQUAL EMPLOYMENT OPPORTUNITY PROGRAM REPORT

(To be filed with broadcast license renewal application)

For FCC Use Only

Code No.

Call Letters WTRC-AM, WBYT-FM/WRBR-FM

Name of Licensee PATHFINDER COMMUNICATIONS CORP./ (WRBR IS HICK'S BROADCASTING)

City and State which station
is licensed to serve ELKHART, INDIANA/SOUTH BEND, INDIANA

TYPE OF BROADCAST STATION (Check one)

Commercial Broadcast Station

☐ AM

☐ FM

☒ Combined AM & FM
in same area

☐ TV

☐ Low Power TV

☐ International

Noncommercial Broadcast Station

☐ Educational Radio

☐ Educational TV

SEND NOTICES AND COMMUNICATIONS TO THE FOLLOWING NAMED PERSON AT THE ADDRESS INDICATED BELOW:

Name STEVE KLINE	Street Address 237 EDISON ROAD		
MISHAWAKA	State IN	ZIP Code 46545	Telephone No. (219) 258-5483

FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, and sex. See Section 73.2080 of the Commission's Rules. Pursuant to these requirements, a license renewal applicant who employs five or more full-time station employees must file a report on its activities to ensure equal employment opportunity for women and minority groups (that is, Blacks not of Hispanic origin, Asians or Pacific Islanders, American Indians or Alaskan Natives, and Hispanics). If minority group representation in the available labor force is less than five percent (in the aggregate), equal employment opportunity (EEO) program information for minority group members need not be filed. However, EEO program information must be filed for women since they comprise a significant percentage of virtually all area labor forces. If an applicant employs fewer than five full-time employees, no equal employment opportunity activity information need be filed.

A copy of this report must be kept in the station's public file. These actions are required to obtain license renewal. Failure to meet these requirements may result in license renewal being delayed or denied. These requirements are contained in Section 73.2080 of the FCC Rules (47 CFR 73.2080), and are authorized by the Communications Act of 1934, as amended.

If your station employs fewer than five full-time employees, check the box at left, complete the certification below, return the form to the FCC, and place a copy in your station's public file. You do not have to complete the rest of the form.

If your station employs five or more full-time employees, you must complete all of this form and follow all instructions.

If minority group representation in the available labor force is less than 5 percent (in the aggregate) and you choose not to file EEO program information for minority groups, check the box at left and complete the rest of this form with only information for your program directed towards women.


CERTIFICATION

This report must be certified, as follows:

- A. By licensee, if an individual;
- B. By a partner, if a partnership (general partner, if a limited partnership);
- C. By an officer, if a corporation or an association; or
- D. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

I certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed

Title
SECRETARY-TREASURER
Date
MARCH 21, 1996
Name of Respondent
ROBERT A. WATSON
Telephone No. (include area code)
(219) 295-2500

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the license renewal requested is consistent with the public interest. The staff, consisting variously of attorneys, accountants, engineers, and applications examiners, will use the information to determine whether the license renewal application should be granted, denied, dismissed or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060-0113), Washington, DC 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

The purpose of this document is to remind broadcast station licensees of their equal employment opportunity responsibilities and to provide the licensee, the FCC and the public with information about whether the station is meeting these requirements.

GENERAL POLICY

A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, religion, national origin or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

A broadcast station must also encourage applications from qualified minorities and women for hiring and promotion to all types of jobs at the station.

II. RESPONSIBILITY FOR IMPLEMENTATION

A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME STEVE KLINE/RICHARD RHODES TITLE GM WBYT-WRSR/GM WTRC

It is also the responsibility of all persons at a broadcast station making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that no person is discriminated against in employment because of race, color, religion, national origin or sex.

III. POLICY DISSEMINATION

A broadcast station must make effective efforts to make management, staff, and prospective employees aware that it offers equal employment opportunity. The Commission considers the efforts listed below to be generally effective. Indicate each practice that your station follows. You also may list any other efforts that you have undertaken.

☒ Notices are posted informing applicants and employees that the station is an Equal Opportunity Employer and that they have the right to notify an appropriate local, State, or Federal agency if they believe they have been the victims of discrimination.

☒ Our station's employment application form contains a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, State, or Federal agency if they believe they have been the victims of discrimination.

☐ We seek the cooperation of the unions represented at the station to help implement our EEO program, and all union contracts contain a nondiscrimination clause.

☒ Other (specify) COPY OF STATION'S EEO POLICY IS INCLUDED IN AN INFORMATIONAL PACKET GIVEN TO EACH SUCCESSFUL CANDIDATE. STATION'S EFFORTS HAVE BEEN SUCCESSFUL AS DEMONSTRATED BY SECTIONS IV AND V OF THIS REPORT.

IV. RECRUITMENT

A broadcast station must make efforts to attract qualified minority and women applicants for all types of jobs at the station whenever vacancies occur.

Indicate each practice that your station follows and, where appropriate, list sources and numbers of referrals.

☒ When we place employment advertisements with media some of such advertisements are placed with media which have significant circulation or viewership, or are of particular interest to minorities and women in the recruitment area. Examples of media utilized during the past 12 months and the number of minority and/or women referrals are:

	Number of Referrals	
	Minority	Women
<u>SOUTH BEND TRIBUNE</u>	<u>0</u>	<u>23</u>
<u>ELKHART TRUTH</u>	<u>1</u>	<u>3</u>

- ☒ Recruit prospective employees from educational institutions, including all minority and women enrollments. Educational institutions contacted for recruitment purposes during the past 12 months and the number of minority and/or women referrals are:

Educational Institution	Number of Referrals	
	Minority	Women
BALL STATE UNIVERSITY	0	7
BETHEL COLLEGE	0	3
ST. MARY'S COLLEGE	0	0

- ☒ Contact a variety of minority and women's organizations to encourage the referral of qualified minority and women applicants whenever job vacancies occur. Examples of such organizations contacted during the past 12 months are:

Organization	Number of Referrals	
	Minority	Women
URBAN LEAGUE OF SOUTH BEND	3	2
YMCA CAREER CENTER/SOUTH BEND	3	2
SPECS HOWARD SCHOOL OF BROADCASTING	-	4
CONTINUED EXHIBIT 1		

- ☒ We encourage present employees to refer qualified minority and women candidates for job openings. The number of minority and/or women referrals are:

Minority	Women
0	2

- ☒ Other (specify) and the number of minority and/or women referrals are:
COMMERCIAL EMPLOYMENT SERVICES

Minority	Women
3	3

IV. JOB HIRES

A broadcast station must consider applicants for job openings on a nondiscriminatory basis. Further, to assure that qualified minorities and women are given due consideration for available positions, it must make efforts to encourage them to apply for job openings.

During the twelve-month period prior to filing this application beginning (Month-Day-Year) MARCH 1, 1995 and ending (Month-Day-Year), FEBRUARY 29, 1996 we hired:

Total hires 13 Minorities 1 Women 9

During this period, for positions in the upper four job categories, we hired:

Total hires, upper 9 Minorities 1 Women 6
four categories

V. PROMOTIONS

A broadcast station must promote individuals on a nondiscriminatory basis. Further, to assure that qualified minorities and women are given due consideration for promotional opportunities, it must make efforts to encourage them to qualify and apply for advancement.

During the twelve-month period prior to filing this application beginning (Month-Day-Year) MARCH 1, 1995 and ending (Month-Day-Year) FEBRUARY 29, 1996 we promoted:

Total promotions 11 Minorities 1 Women 6

During this period, in the upper four job categories, we promoted:

Total promotions, upper 10 Minorities 1 Women 5
four categories

VI. AVAILABLE LABOR FORCE

A broadcast station must evaluate its employment profile and job turnover against the availability of minorities and women in the relevant labor market. The FCC will use labor force data for the MSA in which your station is located, or county data if the station is not located in an MSA, to evaluate your station's equal employment efforts. If you use these data in your evaluation, you need not submit them to the FCC.

This section is optional:

As an alternative to MSA or county labor force data, you may use other data that more accurately reflect percentages of women and minorities in the labor force available to your station. If such alternative data are used, data must be submitted on the table below and an explanation attached as to why they are more appropriate.

Percentage in the Labor Force	Women	Blacks not of Hispanic Origin	Asian or Pacific Islanders	American Indians or Alaskan Natives	Hispanics
	46.3	8.4	.3	.3	1.9

The above information is for:

☒

MSA.

☐

City

☐

County

☐

Other (specify)

VII. COMPLAINTS

You must provide here a brief description of any complaint which has been filed before any body having competence jurisdiction under Federal, State, territorial or local law, alleging unlawful discrimination in the employment practices of the station including the persons involved, the date of filing, the court or agency, the file number (if any), and disposition or current status of the matter. Examples of such jurisdiction may include the Equal Employment Opportunity Commission, state and local equal opportunity commissions, or other appropriate agencies.

7/9/92 WLTA (NOW WBYT) EEOC 24M920144 ISSUE: AGE DISCRIMINATION NAME: CONIE POLEZOES, DISPOSITION: SETTLEMENT.

VIII. OTHER INFORMATION

You may also describe other information that you believe would allow the FCC to evaluate more completely your efforts in providing equal opportunity in employment at your station. Submission of such information is optional. Among additional information you may choose to provide are:

Any training programs the station has undertaken that are designed to enable minorities and women to compete in broadcast employment market including, but not necessarily limited to, on-the-job training and assistance to students or colleges. FEDERATED MEDIA STATIONS HAVE AN ACTIVE MINORITY INTERN PROGRAM.

Any problems the station has experienced in assuring equal employment opportunity, or attracting qualified minority women candidates for employment or promotion.

Any efforts the station has undertaken or will undertake to promote equal opportunity in its employment and encourage applications from minorities and women.

- I. CONTINUATION OF MINORITY INTERN PROGRAM.
- II. TWO OF STATIONS MANAGEMENT TEAM TEACH BROADCASTING/JOURNALISM COURSES AT TWO DIFFERENT AREA SCHOOLS AND ENCOURAGE MINORITIES TO APPLY.
- III. CONTINUATION OF ACTIVE RECRUITMENT.

HICKS000404

EXHIBIT "1"

III RECRUITMENT

ORGANIZATION

Number of Referrals

NAACP	0	0
Black Expo Scenic	0	0
Canaan Baptist Church	0	0
St. James AME	0	0
LaCasa of Goshen, Inc.	0	0
Habitat for Humanity	0	0
Workforce Development Services	0	0

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

DAVID L. HICKS,

Plaintiff,

v.

File No. S 94-3603 NZ

EDWARD J. SACKLEY III, individually DECISION
and as Trustee of the Edward J.
Sackley III Trust, EDWARD J. SACKLEY II,
RICHARD C. DOERING, JOHN N. STRANDIN,
JANICE J. SACKLEY, individually and as
Trustee of the Janice J. Sackley Trust,
RICHARD R. ZARAGOZA, ELISE R. ZARAGOZA,
and EDWARD J. SACKLEY, Trustee of the
Edward J. Sackley Trust,

Defendants.

At a session of said Court held in the
County Building in the City and County of
Kalamazoo, State of Michigan, held on the
5th day of August, 1996.

PRESENT: Honorable John F. Foley
Circuit Court Judge

APPEARANCES:

Robert J. Jonker
Attorney at Law
On behalf of the Plaintiff

Craig H. Lubben
Attorney at Law
On behalf of the Defendants

REPORTED BY:

Allison R. Huffman - CSR-0945
Official Court Reporter

Exhibit No. 44
Federal Communications Commission
Presented by DAVID L. HARRIS
Key No. MM-9866
Identified ✓
Disposition Refused
Reporter G. Holmes
Date 11-9-94



TABLE OF CONTENTS

WITNESSES:

None

EXHIBITS:

None

1 Kalamazoo, Michigan

2 Monday, August 5, 1996

3 At about 1:40 p.m.

4 (Court and counsel present)

5 PROCEEDINGS

6 THE CLERK: Court calls the case of Hicks
7 versus Crystal Radio, et. al., B 94-3603 NZ.

8 Please state your appearances for the
9 record.

10 MR. LUBBEN: Craig Lubben for the
11 defendants.

12 MR. JONKER: Robert Jonker on behalf of
13 the plaintiff.

14 THE COURT: The parties have filed
15 cross-motions for summary disposition under
16 MCR 2.116(C)(10) that there is no genuine issue as
17 to any material fact.

18 The Court holds that there are material
19 issues as to material facts on all claims except one,
20 the claim of Plaintiff David Hicks that it was willful
21 and oppressive to him by the acts of the stockholders
22 of the defendant corporation to remove the Forced Sale
23 Provision from the Shareholders Agreement.

24 In his affidavit, Edward Sackley stated that,
25 in order to be certain no purchase or sale of Crystal

(At about 1:48 p.m. proceedings concluded.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

CERTIFICATE

STATE OF MICHIGAN)
) SS:
COUNTY OF KALAMAZOO)

I, Alison R. Huffman, Official Court Reporter,
do hereby certify that the foregoing is a full, true and
accurate transcript of the proceedings had in the
aforementioned cause held on the 5th day of August,
1996, before the Honorable John F. Foley, Circuit Court
Judge.

Alison R. Huffman - CSA 0945
Official Court Reporter

STATEMENT

August 9, 1996

Alison R. Huffman - CSR-0945
Official Court Reporter
Circuit Court B
227 W. Michigan Ave.
Kalamazoo, MI 49007

Robert J. Jonker
Attorney at Law
900 Old Kent Bldg.
111 Lyon St., N.W.
Grand Rapids, MI 49503-2489

RE: Hicks v Crystal, B94-3603NZ

As per your request, a transcript of the proceedings had
before the Honorable John F. Foley, Circuit Court Judge,
at Kalamazoo, Michigan, on the 5th day of August, 1996.

0 + 1, 9 pages, EXPEDITE.	\$50.00
DEPOSIT	\$50.00

TOTAL DUE: \$00.00

THANK YOU!

1 to purchase other shareholders' stock with the Forced
2 Sale Provision, the FCC would have to approve Mr. Hicks
3 as a qualified applicant to receive the license.

4 He stated in light of Mr. Hicks' and Mr.
5 Dillie's misrepresentations to the FCC regarding WRBR,
6 he believed that there is a significant possibility of
7 FCC litigation and that the FCC would conclude that Mr.
8 Hicks is not a qualified applicant.

9 Mr. Emmons stated in his affidavit that rather
10 than face that litigation he believes the shareholders
11 acted reasonably in deleting the Forced Sale Provision.

12 Plaintiff Hicks has filed a letter which was
13 written less than two months before the notice for
14 postponing the effective date of the Forced Sale
15 Provision in which defendant corporation expressed
16 interest in accelerating the trigger date.

17 Mr. Sackley gave as his reason in deposition
18 for the change in the Forced Sale Provision his belief
19 that Plaintiff Hicks was planning an unwelcome take-over
20 of Crystal Radio.

21 The Court finds that there is no genuine issue
22 of material fact that the removal of the Forced Sale
23 Provision from the Shareholders Agreement by the
24 shareholders was, in fact, willfully unfair and
25 oppressive action in violation of the Michigan

1 At the entry into the Shareholders Agreement,
2 the record is clear that it was the reasonable
3 expectation of all parties that the forced sale
4 mechanism would be the exit strategy in the context of
5 an intractable dispute between Mr. Sackley and Mr.
6 Hicks.

7 This is found in the record of the depositions
8 of Mr. Sackley and Mr. Hicks and Attorney Eric Brown.

9 This is the type of dispute that the willfully
10 unfair and oppression section of the Business
11 Corporation Act was meant to cover.

12 Therefore, the motion of defendant for summary
13 disposition is denied.

14 The motion of the plaintiff is granted in part
15 and denied in part. It's granted for judgment on the
16 plaintiff's claim concerning the removal of the Forced
17 Sale Provision, and the rest of the plaintiff's motion
18 is denied.

19 Therefore, in accordance with MCL 450.1489,
20 the action of the shareholders to remove the Forced Sale
21 Provision of the Stockholders Agreement is cancelled
22 hereby.

23 Plaintiff may prepare the order.

24 MR. JONKER: Thank you, your Honor.

25 MR. LUBBEN: Thank you, your Honor.

1 Business Corporation Act, MCL 450.1489.

2 The speculation by Mr. Emmons does not
3 provide justification for the action of the
4 shareholders, and all the other evidence overwhelmingly
5 leads to the conclusion of invalid oppression.

6 Some alternatives might illuminate. If the
7 other shareholders buy out Mr. Hicks, there would appear
8 to be no problem with the FCC concerning his removal
9 from the corporation. If Mr. Hicks buys out the other
10 shareholders, the shareholders don't have a problem with
11 the FCC.

12 Finally, delay and harm to the corporation
13 from possible action by the FCC here appears too
14 speculative to permit the removal of the Forced Sale
15 Provision by the stockholders to stand.

16 Defendant argues that the plaintiff
17 specifically agreed to a provision in the Shareholders
18 Agreement which provides for amendment by those holding
19 majority of the outstanding shares, so that the
20 plaintiff cannot appeal to the Business Corporation Act
21 to avoid his contractual obligation.

22 However, a minority stockholder would have no
23 need ever to use the "willfully unfair or oppressive"
24 provision of the statute if he must rely on actions for
25 breach of contract or breach of bylaws only.

1 would occur until all of the shareholders had a better
2 understanding of the liabilities that Mr. Hicks created,
3 the secretary sent out a notice of a shareholders
4 meeting.

5 The purpose of the meeting was to consider
6 an amendment to provide that the Forced Sale Provision
7 could (sic) be exercised before January 1st -- could
8 not -- excuse me -- that the Forced Sale Provision could
9 not be exercised before January 1st, 1996.

10 The affidavit goes on to state that, after the
11 Court denied the motion for preliminary injunction, the
12 shareholders agreed to amend the Shareholders Agreement
13 to extend the deadline for exercising the Forced Sale
14 Provision to January 1st, 1996.

15 The affidavit concludes with the statement
16 that later, in December 1995, the shareholders voted to
17 remove the Forced Sale Provision completely. No reason
18 is stated by Mr. Sackley for the action by the
19 board -- by the shareholders of the corporation for
20 removal of the provision.

21 In an affidavit by Nathaniel Emmons, an expert
22 on FCC law, he stated that he believes that Crystal
23 shareholders acted reasonably in removing the Forced
24 Sale Provision.

25 He states that, if Mr. Hicks were to attempt